IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10435 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIMMATSINH GOPALSINH SISODIYA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.Uday R.Bhatt for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/12/2000

ORAL JUDGEMENT

Mr. Uady Bhatt learned AGP tenders the affidavit in reply on behalf of respondent no.2-the detaining authority which is taken on record.

#. By way of this petition under Article 226 of the Constitution of India, the petitioner herein has challenged his order of detention passed by the Commissioner of Police, Ahmedabad City on 19.7.1999 in exercise of the powers conferred upon him under section 3(1) of the Gujarat Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 5.8.2000 in pursuance of the above said order. The detaining authority placed reliance on 9 offences right from 16.6.1997 to 3.4.1999 registered against the petitioner under the Bombay Prohibition Act. The detaining authority took into consideration all the papers of investigation in the above said crimes registered against the petitioners. The detaining authority also placed reliance on the statements of 2 witnesses who offered statement against the petitioner on assurance of anonymity to the extent that the petitioner was indulging in dealing of illegal liquor and when opposed by the witnesses, concerned witness was beaten by the petitioner and his associates. From the above material, the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act and hence the order impugned came to be passed.

#. Learned advocate Mr.. H.R.Prajapati for the petitioner and learned AGP Mr. Uday Bhatt for respondents were heard.

#. The detention order came to be challenged on various grounds. One of the grounds is that the representation of the detenu preferred to the Government was not considered in time and the decision on the representation was communicated to the detenu after considerable delay. It was urged that the detention of detenu was vitiated by continued detention due to late communication as to the representation preferred by the petitioner to the Government.

#. The case of the petitioner is squarely covered by the decision of the Apex Court in the matter of Harish Pahwa vs.State of U.P. & ors reported in AIR 1981 SC 1128. In this case the Apex Court ruled as under:

> "...It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary

to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

#. The Apex Court ruled that not only the representation of the detenu is to be attended day to day continuously but the decision must be communicated to the detenu expeditiously. When we examine the facts of this case it appears that the petitioner preferred representation to the Government on 20.9.2000. Xerox copy of the A.D.slip which is on record denotes that the concerned authority received the representation on 21.9.2000. However, the representation came to be decided on 6.10.2000 and communication was sent to the petitioner only on 20.10.2000 in jail. Therefore, the representation of the detenu is not dealt with as ruled by the Apex Court in the above said case and there is considerable delay in communicating the decision to the detenu. The order of detention therefore is required to be set aside because the Apex Court has ruled that when the representation is not dealt with expeditiously by the State, the detention order has to be declared unconstitutional. The order of detention is required to be quashed on this ground alone.

#. In this view of the matter the order passed by the Police Commissioner, Ahmedabad City, Ahmedabad against the petitioner on 19.7.1999 under the PASA Act is hereby quashed and set aside. The petitioner-Himmatsinh Gopalsinh Sisodiya is ordered to be released forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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